

STATEMENT OF
CONCERNED CITIZENS FOR IMPROVED QUALITY WATER
PRESENTED BY CHAIRMAN JOHN A. NEJEDLY
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AN INVENTORY OF WATER CIRCUMSTANCES IN CALIFORNIA
1991

1. The most important and controlling factor in this inventory is the absence of any comprehensive state water management program. While the State Water Resources Control Board ostensibly has succeeded to the responsibility to provide such a statewide management program, it has not even put in place any effective decision relating solely to the issue of water quality and water project operations control in the Sacramento-San Joaquin Delta, and there is nothing in prospect to suggest this abjuration will be corrected.

For example, in 1976 the Board convened a hearing for two declared purposes: to formulate a water quality control plan for the Sacramento-San Joaquin Delta and to determine whether the water use permits held by the U.S. Bureau and the DWR should be amended to implement the plan.

Two years later, in Decision 1485, a plan proposing to do both was adopted. That decision was immediately appealed by the United States of America and a host of water interests it affected.

with little optimistic prospect that the decision will be enforced pending that review. With the track record of D. 1485 that will be in the 21st century, long after the responsibility was established thirty years ago and long after the chaos of all water project operations without project control has been exacerbated.

In the meantime, a new and purported controlling factor has been added, the Federal Environmental Protection Agency. This Agency, under the aegis of the Clean Water Act, has now stated that if the Delta flows set by the Board are lower than the environmental criteria to be independently established by E.P.A., the latter will be enforced. The response of the Board is simply: To litigate that claim of superior jurisdiction, resulting in a time interval of judicial review yet unknown, but extending the time of any subsequent judicial review of amended D. 1485, controlling Delta quality standard and export limits. In addition extending the opportunities to do anything politically or economically expedient in and to the Delta without restraint, absent a final and effective controlling decision.

This means, simply, that the Delta will continue to degrade in water and environmental quality and the Sacramento River will finally go the way of the San Joaquin. With extended uses and increased export then in place there will be no way whatsoever to reverse the circumstances created by the vacuum of

management. What the Delta once was and even what the Delta could be if managed, are lost forever.

2. In the development of the State Water Project cumulative legislation was adopted to be a part of water export management. Specifically, County of Origin legislation and the Delta Protection Act. Thus the primary provision for the needs of areas of origin were not to be superseded by export and the environmental characteristics of the Delta were not to be diminished.

The Task Force can provide appropriate respect for those intentions by revisiting the provisions and legislative history and purposes of those statutory enactments and require that those intentions become a foundation for any water management activity that affects the Delta and the areas of origin. To the contrary, the current direction of the SWCB is to establish export volume and set standards that will accommodate export, not limit export to protect standards.

The qualitative standards for the Delta must be fixed and sustained. The Contra Costa Water District has adopted a water quality program as the operating base for Los Vaqueros Reservoir. The deterioration of Delta standards by SWCB will obviously prejudice that essential premise.

In the meantime, the Contra Costa Water District has initiated construction of Los Vaqueros Reservoir on the prospect that minimum delivered water quality will be 65 ppm, a quality that no longer assured by reason of the ambivalence of the Board.

3. The SWRCB has consistently supported the conclusion that water conservation can be effectively provided by metering, a conclusion firmly established by the Brown & Caldwell Study in Denver. Yet the Board has done nothing to effect those potential savings, particularly in valley communities, while it has the immediate and absolute power to do so.

In the Racanelli decision it was made clear that those water rights generated by permit are subject to amendment by the Board at any time to then best provide for the general public good through the application of Constitutional provisions, the doctrine of public trust and legislative priorities.

For example, the Board and the Bureau of Reclamation have repeatedly been opportuned to qualify present permits and future applications on the condition that meters be installed. This both those agencies have refused to do. The result being that the legislature in requiring meters to be installed in new applications for service has produced the result that a new user incurs the expense of such installation, but the water providers refuse to read the meters as the cost thereof

is a state mandated cost and must be paid for by the state, an obligation the state understandably refuses to pay.

4. The so-called "islands" of the Delta now provide a potential disaster that has been consistently ignored and requires an immediate plan for their future. Whether these islands or some of them can persist while stream and interior level differences consistently increase and how or if they can be maintained and at what cost presents a problem that must be answered at once.

The failure of any levee on any one island at any time and particularly at periods of low river flows has the potential for salt water incursion that can make the Delta source of water for domestic and even agricultural use impossible and with no alternative source available.

Yet we do not have at hand an inventory of these islands, including the soil characteristics of each, the economics of present or alternative uses, the levee maintenance costs, their values and the sources of permanent financial provisions for maintenance expenditures.

It is imperative that these studies, including alternative uses be initiated and a long-term program be adopted to make secure this potential threat to the water supply for over half of the State of California.

5. In order to provide time for the development of a program for the future of the Delta "islands," beginning in 1972 the legislature initiated measures to provide public fund financial assistance in levee maintenance, and in order that such assistance provide as much time as possible for development of a plan, standards to which the levee work was to be done were required to be established by DWR.

The program for financial assistance was furthered by the enactment of SB 34, Senator Boatwright, providing substantial increases in the funds available for financial assistance. That legislation further required compliance with environmental mitigation incident to each levee project.

These requirements and other legislative imperatives such as Bulletin 192, Fish and Game Code Sections 5650 and 1600 et seq are clearly cumulative in their application and purposes to levee maintenance yet they have consistently been ignored in practice and public funds paid without compliance with their collective requirements.

This circumstance has recently (Oct. 1991) been partially corrected by the agencies involved yet payments made previously without compliance with all applicable statutes, including bidding requirements, remain uncorrected, and State funds disbursed without compliance with those requirements must be recovered.

This issue has been made part of another memorandum which, for brevity, is simply referred to here.

6. In the absence of any statewide water management program water supplies both in terms of quantity and quality are there to be taken without reference to constitutional or public trust concerns.

One example of this has resulted in contribution to the degradation of the San Joaquin River to the point, in 1975, that the Central Valley Regional Water Quality Control Board classified the lower San Joaquin as a "water quality limited segment unfit for water contact recreation such as swimming or water skiing or protection of fish and wildlife," a river that thirty years previous had supported an active commercial fishery.

A substantial part of the environmental collapse was the construction of Friant Dam by the Bureau of Reclamation and the removal of its Sierra watershed from the San Joaquin River. This water, now utilized in an arid section of the valley to grow cotton, corn and alfalfa, crops that are eligible for federal subsidy in lieu of cultivation in areas that do not require irrigation.

The result is that agricultural crops that do not require pristine Sierra water utilize the highest quality water in the

state while domestic users are put to reclaimed water consumption, with substantially increased costs of questionable treatment.

Thus, over 3,000,000 people in the state who constitutionally and legislatively are declared first to be served are required to rely upon lesser quality water while the highest quality water is utilized incident to agricultural production that does not require that quality of water.

7. One further subject the Task Force may wish to review is the management of the extensive underground aquifers in the Central San Joaquin Valley. Although serious and continued legislative attempts to establish a collective underground water management entity for this broad area have been made, those who prefer an unmanaged resource for private determination of use have been able to prevent any serious legislatively created control program.

The result of this continued mining and consequent unavailability, particularly in periods of lesser precipitation has resulted, in the estimate of the U.S. Geological Survey, the loss of 16,000,000 acre feet of surface depth and aquifer collapse that cannot be reconstituted, reduction in water levels requiring deeper wells and increased pumping costs, surface subsidence affecting superstratum structures their continued repair or replacement and the

exclusion of access to the lowered aquifer by those who cannot afford drilling or increased pumping costs.

The proffered answer to this circumstance is not management but replacement by alternate surface storage that not only is capital intensive but inefficient as well in that the contamination incident to surface run-off is experienced, and at least a 20% loss of stored water by evaporation is experienced.

8. No detailed management program is in place with reference to agricultural toxics discharged directly or ultimately to surface streams. Herbicide use, particularly in the entry into the Delta, the water supply for over sixty per cent of the people of California, is not supervised, directed or inspected. Qualification of applicators is not managed and discharge sites have not been identified or analyzed.
9. While private public utilities are absolutely controlled in California particularly as to rates and the relationship of rates to costs of service, there is no supervision whatsoever as to publicly owned public utilities. Consequently, the public agencies providing these propriety services can establish rate structures having no relationship whatsoever with the cost of service.

Such a utility in a substantial seasonal use area having relatively few permanent residents can establish high service availability and re-establishment of service charges for all users. The effect is to produce a low unit charge for the commodity provided to the permanent residents and a substantially higher unit cost for the limited resident who uses lesser amounts of the service provided.

Thus the limited resident subsidizes the permanent resident and this is precisely the result intended for only the permanent resident votes and in effect establishes the rate structure of direct benefit only to local residents.

Another example is the public agency having distinguishable areas of volume of the resource use. If the low consumption group is larger than the high consumption group, an inclined rate structure is adopted charging low consumers less per unit than high volume consumers, regardless of the use to which the service is put, and the office holders of the public agency maintain that differential because it creates a political support enclave whose self-interest is reflected by support of those who provide it. A circumstance that will endure so long as no utility supervision is established as those adversely affected by such an inclined rate structure have no remedy whatsoever.

Should they seek judicial review and incur the enormous expense involved in essentially a suit in equity or constitutional equality, the public agency terminates the rate structure, the court dismisses the action as moot, the public agency then re-establishes the rate structure and the consumer, obviously unfairly treated, cannot undertake another suit that will only produce the same result.

10. Water marketing is another issue to be discussed here. This program offered as the solution to water entitlement and need is not the blessing it is purported to be.

The state can establish appropriative and other rights to the use of water, but water, as an essential to existence, cannot be made absolutely subject to private control. Whatever rights may be exercised at any time are subject to limitation or elimination by the State in the public interest.

Relative needs change with time and the permit process that at one time established those relative needs and allocated the resource upon that criteria, must change as well.

An entity that secured an allocation predicated upon need should be entitled to that allocation only so long as that need endures or until a greater public need or purpose appears. Any doubt as to that point was clearly resolved in the Racanelli decision in the United States of America v.

State Water Resources Control Board which held that no water rights are inviolable but are subject to regulation, that permits are subject to the overriding constitutional limitation that water use must be reasonable and that the SWRCB has continuing authority to revise permits to ensure reasonable use, the primary one being domestic water use as established by the legislature.

Thus water marketing by one permitted to secure that resource predicated upon need cannot be sustained. If relative needs have changed, allocations must change as well. If one "entitled" to water by permit proposes to sell it then obviously that need has lessened or abated entirely. If water becomes surplus to need, then the allocation by permit must be reduced to the level of need and water not needed returned to the public pool for re-allocation.

To effect this redistribution, the SWRCB should revoke or revise the permit and redistribute the resource upon the then findings of need and not allow permittees to enrich themselves at the expense of the public who then present a greater public need, particularly at times of serious water supply deficiencies.

Income arising from the new allocation and use should inure to the state and/or the project that created the water supply subject to the permit. Not to a permittee whose requirements have been reduced.

To allow a permittee under a water marketing plan to profit from the greater needs of others, is not appropriate to any concept of the public trust, the constitution or statutory prescription.

To continue to permit one who obtained a right to water predicated upon need whose need no longer exists to individually profit from the sale of that resource to one having a demonstrable and immediate need should no longer be permitted.

Even more, if water is allowed to be distributed to those who can pay the most for it, then those allocations were predicated upon agricultural production will simply abandon that public beneficial use simply to secure the greater benefit from the sale of the water rather than endure the vicissitudes of farming.

11. A review of agricultural subsidies and price supports must be initiated to determine the extent such contributions create artificial demands for water. In the circumstance of water

inadequacy agriculture collectively should be required to be maintained where and in a manner by which the least water is utilized for production.

Price support levels, far in excess of production in other climate areas climatically more favorable to crops grown locally, that obviously induce cultivation in a less appropriate climate and require far greater volume and consequent inappropriate use of irrigation water must be inventoried and ultimately abandoned.

The entire structure of agriculture price supports and subsidy should be inventoried and made public. When such inducements provoke production requiring greater amounts of water than common to production in more appropriate climates those subsidies should be eliminated.

Costs of water delivered to any consumer must reflect the total cost of delivery as subsidy induces consumption beyond need and for socially marginal and even sub-marginal production.

12. Tidelands revenues from the sales of petroleum reserves must be re-directed to the general fund not to one economic group. A full disclosure of all revenues received from that source should be made public and the public made aware of the effects

of that additional revenue upon the general fund and the implications incident to present fiscal circumstances.

13. At the time of the planning for the original state water plan the effects of providing surface irrigation water to otherwise historically arid areas were well known.

Water applied to those areas leaches accumulated salts and by carriage ultimately deposits them in the lowest drainage site. Such aggregate may so concentrate as to make those deposit areas unsuitable for agriculture or previous environmental uses.

Absent the San Luis Drain which was an integral part of water projects in the valley, the ultimate deposit of these toxics became the purported Kesterson Bird Refuge which was ultimately to be their Waterloo, if a pun is appropriate.

When, finally, the decimation of wildlife in Kesterson became too evident to be further ignored, several purported efforts to alternatively remove the toxic concentrations were proposed and rejected as too costly. The decision being not to reduce or terminate water applications to such soils and particularly to areas of egregious concentrations such as the selenium agglomerates, but to provide discharge into the San Joaquin River.

As noted before, this once viable stream is today only a Central Valley sewer line as a result of water project non planning. In 1987, the Assembly Office of Research in an evaluation of water project operations had this to say: "Moreover, the water quality of the San Joaquin River has continued to decline over the past 50 years. The San Joaquin River drains the richest agricultural area in the United States and transports a complex mix of natural and man-made contaminants. During the late summer, when its low flows are pulled directly into the pumps, the San Joaquin River is contaminated with salts and pesticide residue. Up to 70% of the river's volume as it approaches the Delta is made up of untreated agricultural wastewater." That in addition to all the other human and collected wastes of the San Joaquin Valley.

To this wastestream is now to be added the selenium and other toxic mineral concentrations of the Valley along with the salts that formerly remained for the most part in Kesterson.

Another reference to that Assembly Report may be appropriate to bring to the attention of the Task Force the reason for this tragic circumstance, the fact, as has been pointed out above, existing regulations, constitutional provisions and statutory directions are not being enforced.

In the words of the Assembly Report: "The low water quality of the San Joaquin River persists and worsens State water quality laws have not been enforced, and regional water quality plans have not been implemented. Meanwhile, agricultural drainage containing pesticides, fertilizer salts, and natural minerals continues to flow from the farm fields to the tributaries that feed the San Joaquin River."

No other comment could better describe the absolute responsibility to correct this circumstance.

If the review of the Task Force is to provoke substantial changes in water policy, the issues presented here and other concerns submitted is required together with a renewed sense of responsibility to avoid the final chaos that today is too evident to be ignored.

It should be pointed out in closing that the Best Case planning process upon which California water management has been predicated must be put aside. The disregard of historical evidence of scarcity and the inconsistencies of nature should no longer be tolerated in resource administration. Identified records of extended low precipitation years must be made the basis for water management, not the periods of plenty upon which present planning relies.

Scarcity must be the equal of bounty in anticipation and planning. The historical circumstances must be as important as expectations and we must be far better prepared to meet the contingencies of inadequacy than we are today.

Absence of management plans, subsidies that produce relative waste, avoidance of constitutional provisions for domestic water use, private profit from sales of essential resources, empty reservoirs after only two years of drought, supply of water based upon ability to pay, permanent loss of underground reservoirs by overdrafting even in years of normal precipitation, rate structures based upon political advantage, absence of enforcement of conservation and environment management provisions and the administrative inadequacies referred to should no longer be tolerated in a state now keenly aware of the catastrophic potentials clearly evidence that have been created by the failures and mistakes of the present and the past.

We should no longer endure the obvious circumstances destructive of the quality of the natural water systems of California which as clearly can be corrected.

Others such as the damage to the salmon fishery incident to gold recovery, the failure to enforce existing laws as conditions to the payment of public funds for Delta levee maintenance, the absence of standards, inspection and

approval of such works and failure to the intended condition of public levee access, together with lack of requirement for screening of pumps and siphons are, as well, easily susceptible to corrections.

The absence of effective control of identified toxic discharges and leachates of mines and mining and the failures to prohibit or even regulate the sale, use and consequent discharge to our waterways of known contaminants, carcinogens and toxic minerals tell us as well of the absolute failure to interfere with the system that considers only the short term exploitation of resources with only insensitive token regard for future needs.

But correction of obvious environmentally damaging activities is not the keystone of water management policy in California. Instead, to create an image of concern, commission after commission, task force after task force, board after board, study after study, follow each other in periodic sequence to report upon inventories of increasing degradation without direction or even intent to remedy the pathetic conditions they cyclically report.

The reason for the failure of the system to eliminate or even reduce the documented and clearly obvious circumstances that have led to the degradation and mismanagement of water resources, and other resources as well, is the absolute

control by immediate economic beneficiaries to whom present yield obscures consideration for sustained yield for the future.

In a political system that finds incumbency dependent upon financial support, and fund sources for that grubstake arise from the utilization of resources absent a different motivation of which there is nothing in sight, little change can be anticipated.

Absence of management becomes management itself--precisely the goal of those to whom regulation in the broad public interest is a potential nuisance to be ignored.